

No. 1-12-3014

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 11 MC 1247182
)	
WILLIAM VIRAMONTES,)	Honorable
)	Peggy Chiampas,
Defendant-Appellant.)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice Gordon and Justice McBride concurred in the judgment.

ORDER

¶ 1 **Held:** Defendant's convictions for resisting arrest and aggravated assault of a peace officer are affirmed where the evidence was sufficient to prove him guilty beyond a reasonable doubt, and we will not disturb the trial court's determination that the police officers' testimony was credible.

¶ 2 Following a bench trial, defendant William Viramontes was found guilty of the Class A misdemeanors of resisting a peace officer and aggravated assault of a peace officer. The trial court sentenced defendant to 100 days in the Cook County Department of Corrections. On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt

because a video taken by an unknown bystander and posted on YouTube impeached the police officers' testimony, rendering their testimony not credible. We affirm.

¶ 3 Defendant was tried on misdemeanor charges of resisting a peace officer, aggravated assault of a peace officer, and mob action. At trial, Chicago police officer Marc Lapadula testified that about 8:40 p.m. on September 4, 2011, he was on patrol at the family festival Fiesta Borinquen on Division Street with his partner, Officer Brady. Both officers were in full uniform. The festival was to end at 9 p.m., and as people were leaving, multiple fights occurred on the street. Officer Lapadula turned around and saw defendant engaged in a fist fight, scuffling and fighting with five or six other men. As the officer approached, all of the men scattered except for defendant and one other man. Defendant pounded his chest with his fist and took an aggressive fighting stance. Officer Lapadula grabbed defendant's left wrist in an attempt to take him into custody for mob action. Defendant immediately pulled away from the officer, knocking a female officer to the ground in the process. Defendant then pulled back his right arm, made a fist, and swung his fist at Officer Lapadula, missing him. Officer Lapadula struck defendant in the face with the open palm of his hand three times to quickly incapacitate him. He acknowledged defendant's nose may have been bleeding. The officer then tackled defendant and brought him down to the ground. Defendant continued moving on the ground and pulled away his arms. After a few seconds, Officers Lapadula and Brady gained control of defendant's arms and handcuffed him while other officers assisted.

¶ 4 Chicago police officer Jessica Brady testified substantially the same as Officer Lapadula, stating that she saw defendant push and strike several people, and pound his chest with his fist. About 6 to 12 people stood around defendant. Officer Brady saw defendant take an aggressive stance toward other people on the street and determined he was the primary aggressor, initiating altercations with several people. In addition to beating his chest, defendant yelled and screamed

obscenities, and pushed people with his hands. When Officer Brady approached defendant with Officer Lapadula, defendant faced them and took an aggressive stance. The officers attempted to place defendant in custody, but he pulled away from them. Defendant then pulled back his right arm and swung his fist at Officer Lapadula's head, but missed. Officer Lapadula struck defendant in the chest with his open hand a couple times. The officers then took defendant down to the ground. Defendant tried to wiggle away from them, but they were able to handcuff him.

¶ 5 After the State rested its case, the trial court granted defendant's motion for a directed finding for the charge of mob action. The court denied the motion for the remaining two charges.

¶ 6 Defendant testified that he found a video on YouTube that accurately depicted the events related to his arrest. The video was admitted into evidence and played in court. Defendant identified himself 44 seconds into the video as a man holding a cell phone. Trial counsel next stopped the video at 1 minute and 10 seconds, and defendant testified the video showed a police officer grabbing defendant's cell phone. Defendant denied he resisted arrest or attempted to strike a police officer. He testified that the officer struck him in the face, causing him to bleed.

¶ 7 Defendant acknowledged that he did not record the video or post it on YouTube, did not know who did, and did not know if the video had been edited before being posted. Defendant attended the festival with his girlfriend and her aunt. His girlfriend walked ahead of them, and thereafter, a commotion arose in the area where she had walked. Defendant walked towards the commotion to look for her, holding his cell phone in his hand. A large number of people and police officers were scattered about, but he did not see any fighting. Defendant tried to record the commotion and denied participating in it. A police officer told defendant to stop recording and put away his cell phone. The officer then grabbed defendant's hand and tried to take his cell phone. Six or seven police officers grabbed defendant, threw him to the ground, stomped on his

back, and handcuffed him. One officer asked "should I hit him?" and punched defendant in the nose. Other officers hit defendant's back with a stick and put their feet and knees into his back.

¶ 8 After the defense rested, the trial court viewed the video a second time. The State then presented certified copies of defendant's prior convictions for burglary, possession of a controlled substance and criminal trespass to a vehicle.

¶ 9 The trial court found that the video "completely" corroborated the testimony of Officers Lapadula and Brady. The court found the video clearly showed the officers credibly testified that there were numerous altercations on the street. The video further showed the police were aware of the citizen recording the commotion and made no attempt to prevent him from doing so. The court found the officers' testimony that they observed defendant engaged in a commotion was credible. It further found that the video did not show defendant pounding his chest because that portion of the incident was not recorded. The court found that defendant was "not truthful" and "[h]e did not testify credibly and was very evasive." The court noted the beginning of the video was blurred. The video showed defendant with a phone in his hand, and a few seconds later he was speaking with a police officer. About 22 seconds later, the video showed defendant in an aggressive stance, actively resisting arrest, which corroborated Officer Lapadula's testimony. The video did not show defendant swinging at the officer. The court stated that it was clear that the person who recorded the video tried to record as much as possible, and continuously recorded the entire street, which was very crowded and had a heavy police presence. The court noted that Officer Lapadula honestly testified that he struck defendant and possibly caused him to bleed. Based on its findings, the trial court found defendant guilty of resisting a peace officer and aggravated assault of a peace officer. The court subsequently sentenced defendant to 100 days in the Cook County Department of Corrections.

¶ 10 After sentencing, defendant filed a motion for a new trial arguing the State failed to prove him guilty beyond a reasonable doubt because the video impeached the police officers' testimony. At the hearing on the motion, defense counsel again showed the video to the court. Counsel acknowledged the video showed defendant "engaged in all the fighting and punching" and that "ordinarily when the police testify, that's enough to prove beyond a reasonable doubt that he was guilty." Counsel argued, however, that the officers' testimony was inconsistent with what was seen on the video, which created reasonable doubt. Counsel argued that, contrary to Officer Lapadula's testimony, the video did not show a female officer fall to the ground. The video also did not show defendant swinging his fist at the officer. Counsel further argued that Officer Lapadula's testimony that he brought defendant down to the ground by himself was contradicted by the video which showed four or five officers tackling defendant. When counsel claimed the video clearly showed defendant under a group of police officers, the court stated that the video showed a blurred scene with police officers, and that defendant could not be seen at that point. Counsel argued that nothing of importance regarding the elements of the charges appeared on the video. The State argued that the video was random and did not show much of what occurred as the bystander recording the scene did not have the camera focused on defendant.

¶ 11 The trial court noted that there was not a continuous focus on the scene involving defendant. The court then stated:

"In fact, the video will bear out there was panic of the entire incident. Panic and as I indicated in my finding in this case, I will indicate again that I do believe that the officer's [*sic*] testified credibly. I do believe that and I will reiterate I found Mr. Viramontes not truthful. I did not find him credible at all and I find contrary to your opinion, Counsel, that the video did corroborate numerous instances of the officer's testimony."

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The court repeated its findings from trial that the video was blurred in the beginning, showed defendant holding his cell phone, then showed defendant speaking with an officer. The court then stated:

"What it does show corroborates the testimony of Officer Lapadula. That Officer Lapadula, which this Court believes the testimony and it's clear that it's at that point in the video that the videographer – it swings away from the altercation where the defendant is with the officer [to] the rest of the street and then comes back to the video or to that scene.

It's at that point after which in my opinion Officer Lapadula – it's at that point that the officers are reacting to Mr. Viramontes swinging at Officer Lapadula and taking him to the ground. After I observed him clearly, Mr. Viramontes being in an aggressive stance. He did and I continue to indicate based on the evidence that I heard and that I saw actively resisting the officers."

The trial court denied defendant's motion for a new trial and ordered that the guilty findings and sentence would stand.

¶ 12 On appeal, defendant contends the State failed to prove him guilty beyond a reasonable doubt because the video impeached the police officers' testimony, rendering their testimony not credible, and no reasonable fact finder could have found their testimony credible. Defendant argues that the video either impeaches or does not corroborate several important facts, including whether defendant engaged in extensive fighting before his arrest, pounded his chest, pulled away and caused a female officer to fall, took an aggressive stance, and swung his fist at Officer Lapadula. He claims the video also impeaches or fails to corroborate whether Officer Lapadula grabbed defendant's wrist, struck him in the face, and tackled defendant by himself. Defendant claims not one event on the video happens in the manner or order alleged by police, which shows

their testimony was not credible. Defendant further asserts that the trial court wrongly assumed defendant acted unlawfully during the time he was not being recorded.

¶ 13 When defendant argues the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *Baskerville*, 2012 IL 111056, ¶ 31. This standard applies whether the evidence is direct or circumstantial. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). A criminal conviction will not be reversed based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt. *People v. Givens*, 237 Ill. 2d 311, 334 (2010).

¶ 14 In a bench trial, the trial court, sitting as the trier of fact, is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences therefrom. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). In weighing the evidence, the fact finder is not required to disregard the inferences that naturally flow from that evidence, nor must it search for any possible explanation consistent with innocence and raise it to the level of reasonable doubt. *Jackson*, 232 Ill. 2d at 281. This court is prohibited from substituting its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *Jackson*, 232 Ill. 2d at 280-81. Defendant's conviction will not be reversed on review simply because he claims a witness was not credible or the evidence was contradictory. *Siguenza-Brito*, 235 Ill. 2d at 228.

¶ 15 To prove defendant guilty of resisting a peace officer, the State must show that defendant knowingly resisted a peace officer, the officer was performing an authorized act in his official capacity, and defendant knew he was a peace officer. 720 ILCS 5/31-1(a) (West 2010). To

prove defendant guilty of aggravated assault of a peace officer, the State was required to show that defendant, without lawful authority, engaged in conduct that placed a peace officer in reasonable apprehension of receiving a battery, and he knew the individual assaulted was a peace officer engaged in the performance of his official duties. 720 ILCS 5/12-2(a)(16) (West 2010). An arresting officer may generally use any force reasonably necessary to effect an arrest and need not retreat in the face of resistance. 720 ILCS 5/7(a) (West 2010); *People v. Sims*, 374 Ill. App. 3d 427, 432 (2007). A person being arrested has no right to use force to resist an arrest by a known police officer, even if he or she believes that the arrest is unlawful and the arrest is, in fact, unlawful. 720 ILCS 5/7-7 (West 2010); *Sims*, 374 Ill. App. 3d at 432. An exception exists only where an officer uses excessive force. *Sims*, 374 Ill. App. 3d at 432 (citing *People v. Williams*, 267 Ill. App. 3d 82, 88 (1994)). The use of excessive force triggers the right to self-defense. 720 ILCS 5/7-1(a) (West 2010); *Sims*, 374 Ill. App. 3d at 432.

¶ 16 Here, we find that the evidence was sufficient for the trial court to find defendant guilty of resisting a peace officer and aggravated assault of a peace officer. Officers Lapadula and Brady both testified that while they were on patrol at the festival in full uniform, they observed defendant engaged in a fight, pushing and hitting several other men. Both officers further testified that when they attempted to take defendant into custody for mob action, defendant pulled away from them. In addition, both officers testified that after they took defendant down to the ground and attempted to handcuff him, defendant continued moving his body and arms, and tried to get away from them. We find that the officers' testimony clearly established that defendant knowingly resisted the officers who were attempting to arrest him.

¶ 17 Similarly, both Officers Lapadula and Brady testified that after defendant initially pulled away from them, defendant pulled back his right arm, made a fist, and swung his fist at Officer Lapadula, missing him. We find that this testimony sufficiently established that defendant

attempted to punch the police officer who was arresting him, and thus, was guilty of aggravated assault of a peace officer.

¶ 18 This court has reviewed the video that was admitted at trial, and we find no basis for disturbing the trial court's determination that the video did not impeach the officers' testimony. We completely agree with the trial court's assessment that the beginning of the video is blurry, and that the person recording it was trying to record as much action as possible and was not continuously focused on the scene involving defendant. The video repeatedly pans up and down the street, and the recorder then turned from the street to the sidewalk where defendant was engaged in the altercation. The recorder then turned away from defendant and spent several seconds recording other action on the street, including two police cars coming down the street with their lights activated. The recorder then turned very quickly back to the sidewalk scene, at which point the video shows defendant already engaged in a heated confrontation with police, and then shows defendant being taken down by police.

¶ 19 The trial court inferred that defendant engaged in some of his conduct, such as pounding his chest and swinging at Officer Lapadula, while the recorder was not focused on him. Because the video is not completely focused on defendant, and in fact, turns away from him for several seconds, we find the trial court's inference very reasonable. We find absolutely no merit in defendant's claim that, because specific acts do not appear on the video, the video impeaches or contradicts the police officers' testimony. The trial court found that the video "completely" corroborated the officers' testimony and clearly showed that Officers Lapadula and Brady testified credibly. The court also expressly found that defendant was "not truthful" and "did not testify credibly and was very evasive." Sitting as the trier of fact, it was the trial court's responsibility to determine the credibility of the witnesses' testimony, weigh the evidence, and

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draw reasonable inferences from that evidence. The trial court was in the superior position to make these credibility determinations, and we find no reason to disturb its findings.

¶ 20 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 21 Affirmed.